SUPREME COURT, U. S.
MAY 10 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1234

ROBERT E. KENNEDY, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FOR THE THIRD CIRCUIT

REPLY BRIEF IN ANSWER TO RESPONDENT'S MEMORANDUM IN OPPOSITION

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On Petition for a Writ of Certiorari to the United States Court of Appeals for The Third Circuit

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Petitioner Kennedy prays that this court not be misled by Respondent Commissioner's memorandum in opposition. Kennedy's notice of appearance, docket fee, "Motion to Dispense Temporarily with the Requirement for Printing," and typewritten petition were filed in good faith by Kennedy by timely deposit in the U.S. Mail on March 21, 1972.

Kennedy notes that the court's Rule 22(3) terminology "*filed with the clerk*" is not elsewhere defined within the court's rules. In attempting to comply in good faith with the court's rules, the Rule 22(3) terminology did not register any narrow literal requirement in Kennedy's mind that a paper must be physically presented in face to face filing with the Clerk prior to the last minute of the last day for filing the paper. What did register in Kennedy's mind was that in the Tax Court and in the Court of Appeals below the terminology "*filed with the clerk*" is allowed the broad literal requirement that a paper need only be physically deposited in the U.S. Mail prior to the last minute of the last day for filing the paper. Kennedy notes that the Court's Rule 22(3) does neither affirmatively nor negatively allow for the circumstance of filing a paper with the clerk via the U. S. Mail.

Had Kennedy not skipped over Rule 22(2) because it starts out to reference procedure in *criminal* cases, he might have had a clue to what now, too late, appears to be the court's view on filing papers with the clerk by mail. However, even narrow literal interpretation of Rule 22(2) would appear to be inequitous in this, the highest court of our land. There is no way of getting around the fact that, unless filing with the clerk can be considered timely in all timely instances of deposit in the U.S. Mail, the further any citizen resides from Washington, D.C. he will have less of his procedural time allocable to executing a paper because, as distance increases, more time must be allocated for travel to Washington and it must come from the same amount of supposedly equal procedural time allowed all geographically dispersed residents.

Kennedy does not try to say that the 90 days he had to file his petition were insufficient, although a great amount of his time was devoted to better acclimating himself to his newly promoted position of copilot, a position the lower courts have held must be filled with the highest degree of care and skill in U.S. air carrier operations. Kennedy had also just about given up out of frustra-

tion over the justice he felt he had received in the courts below; but alas, if hope was gone, Kennedy's faith in our system of justice rekindled itself, and he decided to file his petition. On March 13th, Kennedy asked his employer to allow him to drop a scheduled two day flight away from home from his schedule; for which tentative approval was given. At 5:00 A.M. on March 14th, Kennedy was called and told that he would have to fly his flight as scheduled because a snow storm had hit Chicago and operations had been disrupted to the extent that all reserve pilot coverage had been expended, and to the extent that Kennedy's scheduled flight would have had to have been cancelled in his absence. Kennedy was away from home on flights on March 14th and 15th, and again on March 16th, 17th, and 18th; he worked full time on his petition March 19th, 20th, and finished it the evening of March 21, 1972, when he timely mailed it in typewritten form to the court.

As a last resort only, Kennedy would hope to overcome any possible real technicaljty raised by the Commissioner by raising his own technicality. The Commissioner cites 28 U.S.C. 2101(c) as controlling in that area of limiting the period for filing a petition for a writ of certiorari to 90 days. Now maybe Kennedy is not reading the correct section of the 1970 edition of The Code; for he neither can see any specific period of limitation set forth in that section, nor any reference as to what *filing* shall be considered to consist of. Therefore, in the absence of any specifically cited precedent by the Commissioner to show why the court can not consider Kennedy's petition as being timely, Kennedy prays that the court not consider his petition as being untimely; and grant or deny the petition solely on merit, and within that jurisdiction cited in Kennedy's petition.

Respectfully submitted,

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